THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.17088 of 2006

Dated: 21st August, 2006

Between:

S.K.Aziz.

…..PETITIONER

AND

Labour Court-III, rep by its Presiding Officer,k Chandravihar Building, 4th Floor, M.J. Road, Hyderbad & 2 others.

….RESPONDENTS

THE HONOURABLE SRI JUSTICE
N.V.RAMANA

W.P.No.17088 of 2006

ORDER:

The petitioner, who is a retired Driver of the respondent-Corporation, has filed this writ petition seeking to call for the records in connection with the Award of the 1st respondent/Labour Court in I.D.No.79/2002, dated 27-10-2004, published on
2-3-2005, and quash the same insofar it went against the petitioner in not granting back-ages and attendant benefits.

The petitioner joined the service of the 2nd respondent Corporation as Driver in the year 1977. He was issued charge sheet dated 5-11-1998 for which the petitioner submitted a detailed explanation denying the charges. The 2nd respondent having not satisfied with the explanation submitted by the petitioner held an enquiry and removed the petitioner from service. Questioning the said removal order, the petitioner approached the Labour Court, and the Labour Court, by an award dated
27-10-2004 passed in I.D. No. 79 of 2002, set aside the order of removal and ordered reinstatement of the petitioner without
back-wages and without attendant benefits, which is the subject matter of the writ petition.

The learned counsel for the petitioner contended that the

Labour Court, having ordered reinstatement of the petitioner into service, was not justified in denying backwages and attendant benefits, and as such, prayed that the writ petition be allowed, and the respondents-Corporation be directed to pay backwages and give attendant benefits.

The learned Standing Counsel for A.P.S.R.T.C submitted that though the labour Court held that charges 1 to 3 are not proved, however for unauthorized absence of the petitioner from
7-2-1996 to 2-1-2001 it held that there is no correspondence by the petitioner with the management for the above period. The labour court holding so, felt that the punishment of removal of the petitioner from service is disproportionate and directed reinstatement of the petitioner into service, but however with regard to the delay in not informing the whereabouts from
7-2-1996 to 2-1-2001 it disentitled the petitioner for backwages and attendant benefits. The learned Standing Counsel therefore submitted that the award of the labour court is just and reasonable and needs no interference.

Heard the learned counsel for the petitioner as also the learned Standing Counsel for A.P.S.R.T.C and perused the award of the labour Court.

On the charges leveled against the petitioner, an enquiry was conducted. Based on the enquiry report, a show cause notice was issued, and upon considering the explanation submitted by the petitioner thereto, the disciplinary authority, passed an order of removal. Though the petitioner was absent to duties unauthorisedly from 7-2-1996 to 2-1-2001 without disclosing his whereabouts, the

Labour Court took a lenient view and ordered reinstatement of the petitioner into service, however to give a minor punishment it disentitled the petitioner for backwages and attendant benefits.

It is a case of unauthorized absence of the petitioner from 7-2-1996 to 2-1-2001 without disclosing his whereabouts. The Labour Court though held that there is no correspondence by the petitioner with the management from 7-2-1996 to 2-1-2001, however, felt that the punishment awarded by the disciplinary authority is excessive and disproportionate to the misconduct, and set aside the order of removal, and directed his reinstatement into service without backwages and without attendant benefits. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages and attendant benefits.

Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See ***U.P. State Brassware Corpn. Ltd. V. Uday Narain Pandey***[1]). It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the appellate authorities had passed orders in violation of the principles of natural justice. But, the Labour Court has set aside the order of removal passed by the disciplinary authority and ordered reinstatement of the petitioner into service on the ground that the punishment imposed was disproportionate to the proved misconduct. In ***Karnataka Bank Ltd. V.***

A.L. Mohan Rao[2], the apex Court held that it is not for the Courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority, as confirmed by the appellate authorities, was set aside by the Labour Court, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

(N.V. RAMANA, J.)

Date:, 21st August, 2006.

GRK

THE HONOURABLE SRI JUSTICE N.V.RAMANA

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Writ Petition No.10139 of 2005

Dated: 27th March, 2006

The petitioner against the order of removal preferred an industrial dispute before the labour Court in I.D.No.79 of 2002. The labour Court passed an award on 27-10-2004 directing reinstatement of the petitioner, but denied backwages and attendant benefits.

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1 (2006) 1 SCC 479

2 (2006) 1 SCC 63